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Patent  
Attorney Docket No. 4389

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant:	Brian E. Dalton	)	
		)	
Application No.:	10/642,976	)	Swiger III, James L.
		)	Patent Examiner
Filed:	August 18, 2003	)	Art Unit 3733
		)	
For:	CERVICAL COMPRESSION PLATE	)	
	ASSEMBLY	)	
			Pittsburgh, Pennsylvania

**REPLY TO EXAMINER'S ANSWER**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The Examiner's Answer requires a response in regard to the Examiner's arguments set forth under Section (10) Response to Argument. Appellant therefore replies as follows:

**(10) RESPONSE TO ARGUMENT**

The Examiner states that "The functional limitation of being 'configured to' is similar to 'capable of' where it has been held at the recitation that an element is 'capable of' performing a function is not a possible limitation but only requires the ability to so perform and further does not constitute a limitation in any patentable sense." In this regard the Examiner cites *In re Hutchison*, 69 USPQ 138.

This analysis made by the Examiner is completely inaccurate. The limitation "configured to" specifically means that the device so configured must have the required dimensions and contours to carry out the required function. To the contrary, the term "capable of" implies no such physical limitations and therefore the Examiner's analysis does not follow. The term "configured to" cannot be considered equal to the term "capable of". It is respectfully submitted that while the term "capable of" is not a positive limitation, that nevertheless, the term "configured to" is in fact a positive limitation. Therefore, the ruling of In re Hutchison does not apply.

In conclusion, the references or any combination thereof do not suggest Applicant's invention as claimed, and the Examiner's rejection should be overturned.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on June 12, 2008

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